



W.P(MD)No.5072 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD).No.5072 of 2022
and WMP(MD)Nos.4135, 4136 of 2022

C.Chinnachamy

... Petitioner

Vs

1. The District Collector,
District Collector Office,
Virudhunagar District.
2. The District Revenue Officer/
District Additional Executive Magistrate,
Virudhunagar District.
3. The Revenue Divisional Officer,
Sethur, Virudhunagar District.
4. The Zonal Deputy Tahsildar,
Rajapalayam Taluk, Rajapalayam.
5. V.Shanmugavelu

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the impugned order passed by the 2nd respondent vide his proceedings



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No.Ne.Mu.Aa2/21236/2017, dated 21.01.2021 and consequential impugned proceedings of the 4th respondent in T.R.No.2021/0103/26/121104TR, dated 16.08.2021 and quash the both as illegal and arbitrary and consequently direct the respondents 2 to 4 to maintain the Village Revenue Records by restoring the Patta No.318 and 269 stands in the petitioner's parents name in so far as Survey No.296/1A, 292/3, 292/4A, 292/4B, situated at Sethur, Rajapalayam as it was before the civil suit filed by the petitioner in O.S.No.327 of 2017, on the file of Subordinate Court, Srivilliputhur, within time limit that may be stipulated by this Court.

For Petitioner	: Mr.M.Palaniselvam
For R1 to R4	: Mr.N.Muthu Vijayan Special Government Pleader
For R5	: Mr.T.R.Subramanian

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with the order of the second respondent/The District Revenue Officer/District Additional Executive Magistrate, Virudhunagar District, dated 21.01.2021 in No.Ne.Mu.Aa2/21236/2017 and consequently, the proceedings of the fourth respondent/The Zonal Deputy Tahsildar, Rajapalayam Taluk, Rajapalayam, dated 16.08.2021 in T.R.No.



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2021/0103/26/121104TR and direct the second to fourth respondents to maintain the village revenue records, with respect to Patta Nos.318 and 269, which stood in the name of the parents of petitioner relating to survey numbers 296/1A, 292/3, 292/4A, 292/4B at Sethur in Rajapalayam.

2.In the affidavit filed in support of the writ petition, the petitioner had stated that his parents had purchased the aforementioned lands at Sethur by a registered sale deed. The Patta No.269, with respect to Survey number 296/1A stood in the name of his father Chelliah and Patta No.318 for lands in Survey No.292/3, 292/4A, 292/4B stood in the name of his mother Thangammal. Both the parents were enjoying the properties during their lifetime. After their demise, the petitioner and his three brothers were enjoying the properties. The three brothers agreed to sell the property to the petitioner. According to the petitioner, they had executed an unregistered sale deed. Thereafter, they also executed a gift deed on 01.03.2004, but subsequently cancelled it on 16.08.2004. It is also stated that one of the brothers had obtained loan and had permitted the petitioner to reside in his portion and also executed a release deed in favour of the petitioner herein. Therefore, the petitioner claims a right for two shares in the undivided



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property. It is stated that the younger brother of the petitioner had executed a power of attorney in favour of one Sanjeevi/second elder brother by Doc.No. 822/07 and the second elder brother also executed a settlement deed in favour of his daughter Kohila.

3.All the four brothers had been dealing with the property even before it had been partitioned by metes and bounds.

4.The fifth respondent had purchased the share of Sanjeevi and his daughter by two registered sale deeds, registered in Doc.Nos. 617/07, 618/07 on 14.03.2007 and by a subsequent rectification deed Nos.1728/07, 1729/07, dated 31.07.2007.

5.The fourth respondent had not recognized that sale and had not included the name of fifth respondent in the Patta. It is thus seen that even though the brothers have agreed for partition within themselves, the fifth respondent had also purchased a portion of the property for valuable consideration. It is therefore only appropriate that his name is reflected in the Patta.



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6.The petitioner has also filed a civil suit in O.S.No.327 of 2017 on the file of Subordinate Court, Srivilliputhur for the relief of partition and separate possession, in accordance with the share claimed by him. That suit will have to be decided first. In accordance with the division of the properties by metes and bounds relating to the share of each one of the four brothers, out of which, Sanjeevi and his daughter, the fifth respondent had also purchased a share, the revenue records will have to be modified accordingly. Therefore, the petitioner will now have to concentrate on the disposal of the suit.

7.It is contended by the fifth respondent that the suit had been filed after inordinate delay. The Subordinate Court alone can examine that contention of the fifth respondent, who is also the third defendant in the suit. He has also filed his written statement in the suit and a counter affidavit in this writ petition.

8.This Court cannot deal with the relative merits and demerits of that issue and it is the privilege of the learned Subordinate Judge, to examine the respective shares of each one of the parties, ie., the share of fifth



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respondent herein, the share of petitioner herein and then come to a decision about dividing properties in metes and bounds. The statement of the fifth respondent that partition has already been done is also recorded. I am confident that the issue whether the partition had already been done would also be examined. These facts can only be decided by the learned Subordinate Judge. The revenue records should be mutated by the Revenue Authorities in accordance with the Judgment in that suit. Till such time, there cannot be any mutation of records by the Revenue Authorities. Let them await the Judgment of the Subordinate Court.

9. With these directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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NCS : Yes/No
Index : Yes / No
Internet: Yes/ No

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C.V.KARTHIKEYAN, J.

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